

Statement Of
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Before the
Subcommittee on Public Lands and Forests
Committee on Energy and Natural Resources
U. S. Senate

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Concerning

S. 3157: The Southeast Arizona Land Exchange and Conservation Act of 2008

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to appear before you today to provide the Department of Agriculture's view on S. 3157, the "Southeast Arizona Land Exchange and Conservation Act of 2008."

I will limit my remarks to the provisions of the bill directly related to National Forest System (NFS) lands and will defer to the Department of the Interior on provisions relating to the lands managed by the Bureau of Land Management (BLM).

S. 3157 is a complex land exchange bill that directs the Secretary of Agriculture to convey to Resolution Copper Mining, LLC (Resolution Copper) certain lands and interests in the Tonto National Forest, Arizona, in exchange for private lands and funds to acquire additional lands in the State of Arizona for management by the Forest Service and the Bureau of Land Management.

The Department believes that the acquisition of the non-federal parcels to be managed as part of the NFS would provide protection for riparian habitat and water rights, archeological sites, two miles along a permanently flowing trout stream, a year round pond and an endangered cactus species. The Department provided testimony last

November on a similar bill, H.R. 3301, and we understand that S. 3157 reflects modifications to that bill in response to various concerns. We appreciate these changes. However, some concerns remain and we have some new concerns regarding the new provisions in this bill. In this context, the Department supports the exchange as well as the valuation provisions, and believes it is in the public interest, although some concerns remain regarding the overall bill.

The bill directs the exchange of a 3,025-acre parcel referred to as the "Oak Flat" parcel from the United States for nine parcels of land owned by Resolution Copper, six of which would be conveyed to the Department of Agriculture: the 147-acre Turkey Creek parcel in Gila County; the 148-acre Tangle Creek parcel in Yavapai County; the 149.3-acre Cave Creek parcel in Maricopa County; the 266-acre JI Ranch parcel the 95-acre parcel referred to as The Pond in Pinal County (all located within the Tonto National Forest); and the 640-acre East Clear Creek parcel in Coconino County located within the Coconino National Forest.

As a condition of the exchange, the bill requires Resolution Copper to convey a 695-acre conservation easement for the Apache Leap escarpment on lands to be conveyed from the United States to Resolution Copper. This conservation easement, which would be held by a qualified unit of government, an Indian tribe, a land trust or certain other organizations, would provide permanent protection for the parcel from surface disturbance and ensure future public access and use.

S. 3157 also directs the Secretary of Agriculture to convey to the Town of Superior, upon the Town's request, the 30-acre town cemetery and approximately 181 acres adjacent to the Superior airport. In addition, upon request by the Town, the Secretary shall convey the reversionary interest and any reserved mineral interest in the 265-acre Superior airport site already owned by the Town.

S. 3157 includes the 95-acre parcel called The Pond that was not a part of H.R. 3301, which would be conveyed to the Department of Agriculture. We understand that this area

is currently used by rock climbers and could accommodate those who are displaced from current climbing areas that would be conveyed to Resolution Copper. While the Forest Service agrees that this would be an attractive site for climbers, it lacks the access and infrastructure to accommodate public use, such as safe parking, pedestrian access, and sanitary facilities. We would like to work with the Subcommittee and the bill's sponsor to amend the bill to require such accommodations be completed prior to the conveyance of the parcel to the Secretary.

If the value of the Federal land to be exchanged exceeds that of the non-Federal land in the specified 9 parcels, section 5(b) of the bill requires that Resolution Copper make a cash equalization payment. The payment may be greater than the 25 percent limit imposed by Section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(b)). All cash equalization funds are to be deposited into the Federal Land Disposal Account and could be used for either 1) acquisition of additional lands from willing sellers within the hydrographic boundary of the San Pedro River within a 2-year period from the date of the deposit or 2) the management and protection of endangered species and other sensitive land or environmental values in the San Pedro Riparian National Conservation Area.

It is our understanding that upon completion of the land exchanges described above, Resolution Copper would explore developing a very deep copper mine beneath the Oak Flat parcel.

Section 4(d) of the bill requires that the exchange contemplated by S. 3157 will be completed within one year. The Department believes that this is insufficient time to complete all the work necessary to complete the exchange, including the development and review of a mineral report, completion of appraisals and surveys, verification of title documents, and the many environmental clearances, reviews, and the consultation with Indian Tribes required under various laws, regulations, and policy, as outlined in section 4(e).

Section 4(g) is a new provision not in H.R. 3301 that requires pre-exchange processing including land survey and specified reviews that are normally done in the course of a land exchange. Section 4(h) directs the Secretary to complete an environmental impact statement post-exchange but prior to commencing mineral production regarding any Federal agency action carried out relating to commercial production. The bill does not specify which party would be responsible for the costs of these provisions. The Department's support is contingent upon the clarification section 4(e) to require that Resolution Copper would be responsible for these costs.

We are concerned about the provisions of section 5(a)(3) regarding the failure of the parties to agree on the value of any parcel. As written, the bill would require that a dispute would be resolved through binding arbitration procedures pursuant to section 206(d) of FLPMA. However, section 206(d) is intended for discretionary exchanges. Accordingly, we believe section 5(a)(3) of the bill should be amended to more specifically address those options in section 206(d) of FLPMA that would be applicable to this exchange. We would like to work with the Subcommittee and the bill's sponsor to amend section 5(a)(3) accordingly.

S. 3157 includes a provision in Section 10 that would require a payment to the United States should the cumulative production of locatable minerals exceed the projected production used in the appraisal required by section 5(a)(4)(B). This provision recognizes that an accurate projection of future production will be difficult to develop, and provides a mechanism for additional payments to the United States should actual production exceed the projected production. The Administration generally supports this approach but would like to work with the committee to clarify the specific intent and implementation procedures, as well as the disposition of receipts.

We object to the language in Section 10(b)(2) that makes funds from potential mineral revenue payments available for expenditure without further appropriation. This provision is meant to ensure that the government is fairly compensated in the event that the valuation process underestimates the amount of mineral resource that is ultimately

recovered, and we support this objective. However, the legislation addresses the exchange of lands with mineral interests, the value of which may not be fully realized until long after the exchange has taken place. We would like to work with the committee to ensure that the bill deposits the receipts into the Treasury, subject to future appropriation.

If the final appraised value of the non-Federal land exceeds the value of the Federal land, Section 5(d) reduces the Town's payment for land it elects to purchase from the Secretary by an amount equal to the difference in the values. We would like to work with the committee to ensure that the taxpayer receives full fair market value in the sale to the Town, in keeping with long-standing policy.

Section 8(a) directs the Secretary to design and construct one or more campgrounds, including access routes, on the Globe Ranger District of the Tonto National Forest within four years to replace the Oak Flat campground. We appreciate that changes have been made to this provision based on previous testimony on H.R. 3301, to double the amount of funding and time to accomplish this task. However, concerns remain. We still believe it will be difficult to find a suitable replacement site within the Globe Ranger District, the funding cited in the bill remains insufficient to construct a new campground to current standards, and construction of a replacement campground within 4 years may be difficult to accomplish. One alternative to constructing a replacement campground would be to add to or upgrade existing campgrounds on the Globe Ranger District. We would like to work with the Subcommittee and the bill's sponsor to address our concerns.

Section 8(b) also was added to address concerns raised in our testimony on H.R. 3301, but concerns remain regarding this provision as well. This section provides an interim period for the Forest Service to retain title to, operate, and maintain Oak Flat Campground. Due to the complex nature of this exchange, we are concerned that the completion of the land exchange could be delayed. We interpret the bill as requiring the Secretary to deed the campground and revoke the mineral withdrawal only if the land

exchange is completed. We would like to work with the Subcommittee and bill sponsor to clarify this language.

Finally, we would like to work with the Subcommittee and bill's sponsor to address some technical issues with the bill and to ensure that the maps described in the bill accurately reflect bill language, and are referenced and dated properly.

This concludes my statement and I would be happy to answer any questions you may have.